

1 you would have to place the rumble strip farther out
2 than you have it on this diagram and in your report in
3 order to have the bicycle wheel in the middle;
4 correct?

5 A The whole thing that I did -- yes.

6 Q Was that a yes. You can explain your
7 answer. But was that a yes or a no?

8 A Well, that's why I measured it like that,
9 to put the bike in the middle of the rumble strip.

10 Q And if the measurements weren't accurate
11 because a rail car is actually wider than the average
12 rail car you measured, and if you are going to have
13 the bicycle wheel in the middle of a rumble strip when
14 the rail car is wider, doesn't that mean that the
15 rumble strip should be placed farther out from the
16 rail?

17 A Well --

18 Q Yes or no.

19 MR. SOLYMOSI: According to who, Roger?

20 MR. TAFT: According to the witness.

21 MR. SOLYMOSI: He has already said that he
22 had a variance in there because of the width of
23 the strip. He has answered that.

24 MR. TAFT: I'm going to object to you
25 coaching the witness.

1 MR. SOLYMOSI: I'm not coaching. I am
2 repeating what he said.

3 MR. TAFT: No, you are not.

4 MR. SOLYMOSI: You can read it back. He
5 stated it's wide enough to give them a variance.

6 MR. TAFT: Mr. Solymosi, I am deposing your
7 expert witness. If you got an objection, raise
8 it, but don't make a speaking objection to coach
9 the witness.

10 THE DEPONENT: He is not coaching me. When
11 I was asked to do this, I was just asked to give
12 them a deterrent. If you put these rumble strips
13 this was more or less to construct something that
14 would keep kids from riding on the tracks. The
15 placement, the placement of these could be wider,
16 could be shorter, could be narrow. I was giving y
17 my opinion as to the cars that I measured, the
18 width that they were, and if this deterrent was
19 imposed or in place you could turn around and say
20 the average car is 131 and to get this document,
21 to get this bike in the middle of this, you would
22 have to place it at this.

23 Q That's what I'm --

24 A But this was a deterrent. This was an
25 estimate. This wasn't written in stone, but this was

1 a deterrent and I put it together that way in an
2 honest, honest opinion, I put this together honestly.

3 Q I know.

4 A And I measured and I put it together.

5 Q I know that.

6 A And that's why it came out that way. If it
7 varied a couple inches one way or another, if they did
8 impose this, it would be a deterrent. I would think
9 it would be a good deterrent.

10 Q Okay. That's not my question.

11 A That's my expert opinion on that.

12 Q I know that. I know that. But I'm not
13 asking that question. I'm challenging your
14 measurements and your conclusion on the placement,
15 which is in your report.

16 So what I'm saying, Mr. Guarino, and it's a
17 pretty straight forward thing, if your measurements
18 and conclusions that provide the basis for your
19 placement of the rumble strips, 72 and a half inches
20 from centerline to centerline of rumble strip, if
21 those measurements change and if your goal was to put
22 the bicycle wheel in the middle of the rumble strip,
23 the placement of the rumble strip would have to
24 change; correct?

25 A If you impose these, when you put them in.

1 Q Yeah.

2 A If you put them in -- this was an estimate.

3 Q I know that.

4 A This was to give a deterrent.

5 Q My --

6 A This could have varied. You could have put
7 these rumble strips further.

8 Q I know that.

9 A I gave you my drawing as to where this
10 would line up.

11 Q I know, I'm just asking you questions as
12 to --

13 A I'm telling you.

14 Q I'm asking you questions as to how
15 different measurements would have affected the
16 placement --

17 MR. SOLYMOSI: I think he has acknowledged
18 your points.

19 A I'm not trying, what I'm trying to say
20 is --

21 Q Okay.

22 A -- these aren't written in stone. I wasn't
23 asked to write this in stone.

24 Q No.

25 A I was asked to give a deterrent, an expert.

1 Q Well --

2 A And I said this would be a great deterrent.

3 Q Yeah, and in your report you told us

4 exactly where to place them, at 72 and a half inches

5 from center of track and that's just what I was asking

6 you. Maybe that placement needs to change based on

7 other measurements, that's all.

8 A Well, yeah, but --

9 Q That's all.

10 A We are not even talking about that, we are

11 actually talking about what this was all put together

12 for, as a deterrent, aren't we?

13 Q No, we are not. We are talking about your

14 placement, which is what I've been asking you. Now,

15 let me ask you question.

16 Would you agree with me that if bicycles

17 had handle bars that were wider than 30 inches under

18 your assumptions here, that would also cause an

19 adjustment of the placement of the rumble strip

20 farther out from the 72 and a half inches that you put

21 it?

22 A I don't think it would really, because --

23 Q Well, let me give you an assumption --

24 MR. SOLYMOSI: Are you going to let him

25 answer the question? You are interrupting him

1 now when he is trying to answer the question.

2 Q Go ahead.

3 A What child would actually ride one hand
4 trying to go over a rumble strip? I rode my bike and
5 I tried to put myself in that position and it's
6 very -- I didn't actually ride a rumble strip, but I
7 mean if you don't have both hands on the wheel.

8 Q You could fall down?

9 A Yes, definitely.

10 Q Would you agree with me that for purposes
11 of how you calculated the measurements, that if the
12 handle bars of a bike were wider than 30 inches, that
13 also would affect the placement of the rumble strip,
14 make it something different than 72 and a half inches?

15 A Yeah, mine are like maybe, the difference I
16 had in that was two inches.

17 Q Would you agree with me, also, that if
18 someone grabbing onto a moving train was doing so so
19 that his hand was not directly above the handle bar,
20 but was off at an angle toward the grab iron instead
21 of directly above the handle bar, that also could
22 affect your measurements and the placement of your
23 rumble strip?

24 A Yeah, I guess it could.

25 Q In calculating your placement of the rumble

1 strip, did you take into account the fact that rail
2 cars rock as they move along the track?

3 A They bounce, they have a tendency to
4 bounce.

5 Q Well, bouncing to me is kind of a forward
6 back. I was saying rocking, side to side?

7 A They go side to say yes.

8 Q So you are aware of that?

9 A Yes.

10 Q Did you take the fact that rail cars rock
11 from side to side as they move into your calculations
12 as to the placement of the rumble strips?

13 A Yeah, but they are not going to sway that
14 much. The grab bars are still going to be in place.
15 You know, I went down and watched a couple of them,
16 the grab bars are still there, they are not going to
17 vary that much.

18 Q Well, when you say you watched a couple of
19 them, what did you watch?

20 A I actually watched them on the tracks. I
21 went on 19th Street tracks.

22 Q A moving train?

23 A Yes.

24 Q And you are saying you paid particular
25 attention to the grab irons to see if they moved while

1 the train rocked?

2 A Yeah, to try to get an idea what it was
3 doing for the grab bar. I tried to see what it would
4 be like to go and reach up and grab for it.

5 Q You stood by a moving train and tried to
6 reach a grab bar?

7 A I stood off to the side and watched.

8 Q How far were you from the moving train?

9 A Probably about 10 feet, 12 feet.

10 Q And you were just kind of watching the grab
11 bar as the train went by to see what it would be like?

12 A Right.

13 Q And you saw the rocking action?

14 A (Witness nodded.)

15 Q Did you measure how far it rocked?

16 A No. How would I do that?

17 Q Well, I don't know. Good question.

18 (THEREUPON, Guarino Deposition Exhibit 6
19 was marked for identification.)

20 Q Let me show you what's been marked as
21 Guarino Deposition Exhibit 6. This is a diagram typed
22 at the top rumble strip diagram. It's part of your
23 expert report; correct?

24 A Yes.

25 Q Where did you get this diagram?

1 A From Donegal, sent it to me and faxed it
2 out to me in his estimate.

3 Q When you refer to Donegal; correct?

4 A Yes.

5 Q Donegal Construction Corporation of
6 Greensburg, Pennsylvania that provided the quotation
7 for milling the rumble strips that's part of your
8 amended expert report dated February 23, 2007?

9 A Yes.

10 Q Guarino Deposition Exhibit 4; right? You
11 are saying that you obtained this from Donegal?

12 A Yes.

13 Q And do you know where Donegal got it?

14 A Donegal installs these. I called them to
15 find out if they would install, if they would do a job
16 for installing rumble strips.

17 Q Okay. Do you know where Donegal obtained
18 this diagram?

19 A Well, that's probably a standard diagram
20 that they have for state highway.

21 Q We really can't make it out and maybe we
22 are speculating a little bit in the lower right-hand
23 corner, but maybe that almost looks like a Keystone,
24 PennDOT or something perhaps.

25 Is it your understanding that this diagram

1 shows the type of rumble strips that are installed on
2 the interstate highways that you reference such as the
3 Pennsylvania Turnpike?

4 A Yes.

5 Q And Donegal does that type of work on those
6 highways?

7 A Yes, that's why I called them.

8 Q And as we indicated earlier, those rumble
9 strips are installed at those locations for the
10 purpose of waking up a drowsy driver before he or she
11 goes off the road?

12 A Yes.

13 Q Does this rumble strip diagram provide the
14 basis for your statement that the rumble strips should
15 be approximately 16 inches to 17 inches long, 7 inches
16 wide on one foot centers, approximately half an inch
17 deep?

18 A That's what the diagram, I went off the
19 diagram. That's what I base it on.

20 Q I want to ask you some further questions
21 that have to do with the location of the rumble strips
22 and their dimensions. If the rumble strips were
23 placed where you state they should be placed,
24 centerline of rumble strip would be 72 and a half
25 inches from centerline of track; correct?

1 A Yes.

2 Q And length of rumble strip is 17 inches
3 long?

4 A Yes.

5 Q So centerline of rumble strip to end of
6 rumble strip would be 8 and a half inches?

7 A Yes.

8 Q So if we were to measure the distance on
9 Guarino Deposition Exhibit 5, your handwritten
10 diagram, from centerline of track to end of rumble
11 strip, we would have 64 inches being 72 and a half
12 inches less the 8 and a half inches of the rumble
13 strip; correct?

14 A No, I'm actually going, the actual center,
15 you are adding the center of the rumble strip.

16 Q Well, I'll try to rephrase my question to
17 make sure we got it right.

18 Distance from centerline of track to
19 centerline of rumble strip is 72 and a half; correct?

20 A Right.

21 Q Length of rumble strip is 17 inches?

22 A Right.

23 Q So --

24 A Oh, if you minus the half.

25 Q Minus the -- if you minus the 8 and a half

1 inches --

2 A Yeah, brings you to the inside of the --

3 Q That gets you to 64 inches?

4 A Right.

5 Q Would you, just so we have these numbers
6 written on here, would you mark in, if it's not in
7 there already, well, I guess it is 16 to 17 inches,
8 but would you mark the distance between the edge of
9 the rumble strip to centerline of track at 64 inches?

10 A Yeah, you are going to be here
11 (indicating).

12 Q Okay, I'm looking from edge of rumble strip
13 to centerline of track, I think we agreed that was 64
14 inches, because the 72 and a half less 8 and a half?

15 A This is 64 and a half here.

16 Q Draw a line from there to there.

17 A (Indicating).

18 Q Yeah. My calculation was 64 being 72 and a
19 half less 8 and a half, being 64. Do you agree with
20 me on that?

21 A Yes.

22 Q Scratch out that half.

23 A (Indicating).

24 Q Now, one other question I'd like to ask
25 you, see if you agree with me on this.

1 I want you to assume a fact that the
2 railroad ties that are under the rail and under the
3 pavement are 8 feet 6 inches in length which works out
4 to be 102 inches. Would you agree with me that if
5 from end of tie to end of tie is 102 inches, distance
6 from centerline of track to end of tie would be 51
7 inches?

8 A (Witness nodded.)

9 Q Do you agree with that?

10 A Yeah.

11 Q And would you agree with me then that if
12 the distance from centerline to end of tie was 51
13 inches and the distance from the edge of the rumble
14 strip to centerline is 64, that the rumble strips
15 would be located off to the side and not over the end
16 of ties?

17 A Yeah, but they don't have to be.

18 Q No, but just answer my question.

19 A No, it wouldn't. But they don't have to
20 be. Actually what you are doing is you want the
21 distance there for the bike, the bike to be in line
22 for the grab bar.

23 Q I know that. I know that.

24 A Ties have nothing to do with it.

25 Q But I'm just asking the question based on

1 those measurements if end of rumble strip is 64 inches
2 and end of tie is 51, the rumble strips are located
3 farther out into West 19th Street --

4 A Sure, but the --

5 Q Let me finish. The rumble strips are
6 located out into West 19th Street and not over the end
7 of ties, do you agree with that?

8 A Yeah, they don't have to be, though.

9 Q Okay. You understand that West 19th Street
10 is a city street?

11 A Yes.

12 Q Owned and maintained by the City of Erie?

13 A Yes.

14 Q With respect to the signs that you
15 recommended be placed between the rail, "DANGER-NO
16 BIKES", would you agree with me that if a train was
17 over the tracks, those signs would not be visible to
18 someone on 19th Street?

19 A You can see them prior to that. I mean
20 that's why you put signs down. But the trains are
21 high enough, I took that into consideration you can
22 see under them, too.

23 Q So you are saying even if a train were
24 operating over the track, you think someone on 19th
25 Street would still be able to see --

1 A Yeah, you could..

2 Q -- the sign?

3 A Because you are going to have spacing
4 between the cars and the cars are sitting higher where
5 you can see under them. I took that into
6 consideration when I did that. But the majority of
7 the time, too, is you want to show that it's a danger
8 zone, with the lines and the stencils.

9 Q Your expert report contained kind of a
10 combination of a photograph, that's it, and some
11 handwritten, something superimposed, let's put it that
12 way.

13 A Yes.

14 MR. TAFT: Can we mark this?

15 MR. SOLYMOSI: Sure.

16 (THEREUPON, Guarino Deposition Exhibit 7
17 was marked for identification.)

18 MR. SOLYMOSI: It's the only one we have,
19 but --

20 MR. TAFT: Mark it in the corner.

21 MR. SOLYMOSI: That's fine.

22 Q Mr. Guarino, let me show you what's been
23 marked as Guarino Deposition Exhibit No. 7. Did you
24 prepare this?

25 A Yeah.

1 Q Okay. Where did you go to prepare it?

2 A I did it out of my office.

3 Q How did you prepare it?

4 A I sketched it out. I drew it out.

5 Q Where did you get the photograph?

6 A I got it from Mr. Solymosi. I told him I
7 needed something -- I wanted to actually try to show
8 what it would look like as a finished product back
9 then.

10 Q What does this photograph purport to show?
11 What are we looking at in the photograph?

12 A To actually try to implement were I put in
13 my deterrent, you know, the proposal and everything.
14 I wanted to kind of show, see how it would work.
15 This, there is no actual measurements there, I was
16 just trying to show what it would look like.

17 Q The concept?

18 A Yes.

19 Q Let me ask my question again because I was
20 not clear. I see a sign that says Sassafras Street on
21 the photograph.

22 A Yes.

23 Q Forget what you added by way of concept,
24 just go to the basic photograph as it was given to
25 you.

1 A Yes.

2 Q What does the photograph show us? What are
3 we looking at, what direction, what location?

4 A What do you mean? I don't know what you
5 mean as far as direction.

6 Q Well, are we facing east or west?

7 A You are heading east.

8 Q All right. Are we on 19th Street?

9 A Yes.

10 Q And is the cross street that's marked "One
11 Way" Sassafras Street because that's what the sign
12 says?

13 A Yes.

14 Q And you then having gotten a photograph put
15 in your concept which was the "DANGER-NO BIKES" sign
16 between the rails; correct?

17 A Yes.

18 Q And the rumble strips milled in off to the
19 side of the rails; correct?

20 A Yes.

21 Q And then the yellow line?

22 A Yes.

23 Q But I think you told me that none of that
24 was measured out or put into scale?

25 A No, I just --

1 MR. SOLYMOSI: With respect to this
2 exhibit?

3 MR. TAFT: Yeah, that's what we are talking
4 about.

5 A I just tried to actually show what this
6 would look like implemented.

7 Q Okay.

8 A There was no dimensions or anything on
9 there. I took a drawing and I says if you did
10 implement that, this is what it would look like. You
11 know, to look at it. And you know, they were spaced
12 and everything properly, it would be a deterrent for
13 somebody that would, you know, a child riding on the
14 rail, you know, or riding on the rumble strips.

15 Q In preparing this exhibit, this photograph
16 and the concept, you did not do any dimensions to
17 place the rumble strips --

18 A No --

19 Q Let me finish. -- 72 and a half inches
20 centerline to centerline; correct?

21 A No, but there is no way to actually off a
22 drawing -- you know, can I give you an accurate
23 reading off a drawing? I was just trying to --

24 Q Concept?

25 A Concept, yes.

1 Q And I'm just trying to clarify whether it's
2 just a concept or whether it's actual dimensions and
3 measurements. So if someone were able, for instance,
4 to do actual measurements, if they were in some way
5 from this drawing, to measure 72 and a half inches
6 from centerline of rail to centerline of rumble strip,
7 those rumble strips may or may not be located where
8 you have placed them?

9 A Right, like we talked, this is a concept.

10 Q Right.

11 A It's not an accurate.

12 Q And the same thing as far as the spacing of
13 the rumble strips?

14 A Yeah, you can see. I'm not an artist, but
15 I was just trying, like you say, give you a concept.
16 If they would take this and impose it, it would look,
17 that would be like supposedly a finished product with
18 the accurate dimensions.

19 Q Right.

20 A That's what I was trying to come up with.

21 Q Okay, good. But if you were going to
22 actually show it as you proposed it, you would have to
23 place all the rumble strips by measurement --

24 A Yeah, but this was just an actual estimate
25 to do this.

1 Q I understand.

2 A And this here was an actual to show what it
3 would look like.

4 Q Yeah, a concept?

5 A A concept.

6 Q As opposed to specific measurements?

7 A Right, if they would implement it, then you
8 could put it into a drawing with dimensions. But
9 that's just a concept. I tried to -- I asked him for
10 that because I says why can't we show this on the
11 actual street the way it was back then? The street
12 today itself is in excellent shape. So is that,
13 that's in decent shape right there (indicating).

14 MR. TAFT: Let's take a short break. I may
15 be finished.

16 (Break taken.)

17 MR. TAFT: Mr. Guarino, I have no further
18 questions.

19 MR. SOLYMOSI: Okay. Just a couple.

20 EXAMINATION

21 BY MR. SOLYMOSI:

22 Q During your testimony when Mr. Taft was
23 asking you questions, Jim, you said that you didn't
24 put striping on public roads other than the Asbury
25 one. Did you put striping in private roadways?

1 A Yes.

2 Q Could you tell us what kind of experience
3 you have in doing that?

4 A Well, I do parking lots. I do
5 subdivisions. I do apartments. I do a lot of private
6 work, too. I do layouts for people. I do deterrents
7 for people, you know, they will ask me to put, you
8 know, lines in. They did ask me to, one in
9 particular, St. Bonafice they had an erosion problem,
10 I built like a swale. I put in speed bumps for
11 Blessed Sacrament. I mill and prep those.

12 I number, I do flow lanes where I build my
13 own lanes and I do hatched areas. I completely did
14 Mercyhurst College. I designed that, no print.
15 That's all done by me. I do all that.

16 The asphalt I went to seminars and did
17 things. So I've done that kind of work, a lot of it.
18 28 years of it.

19 Q Mr. Taft asked you if you ever read
20 anything, you know, about, that spoke specifically
21 with regard to the idea that, you know, is there
22 anything you read that spoke directly to bikes and
23 bicyclists engaging in the kind of activity that we
24 are trying to prevent here, and you said no, that you
25 hadn't.

1 Do you recall ever reading anything that
2 talked about rumble strips being used as a barrier
3 between vehicular traffic and bicycles?

4 A Oh, yeah. I read in Pavement Magazine and
5 there was an article, too, that was published, too. I
6 read Pavement Magazine every week or every month I get
7 it from them and I read different articles about
8 asphalt flow, everything. Plus I've been to a couple
9 seminars through Pavement Expo. And I went through
10 Seal Master.

11 Q And you were talking about how you came up
12 with the dimensions and the centerlines and stuff, and
13 you had answered that you thought that the strips were
14 wide enough to gave a variance, you know, with respect
15 to when we are talking about centering the bike onto
16 the strip. Could you explain that a little further
17 what you meant by variance?

18 A Well, I tried to put it in the center,
19 figuring a person grabbing up, you know, to grab a
20 rail car, I tried to put those in a general area where
21 the, you know, a bike would hit it 8 inches this way
22 or 8 inches that way, irregardless. It would be more
23 to the outside, but there is 8 inches there that they
24 could play with. If a kid pulled it in tighter, they
25 would be 8 inches to the inside. So you had 16 inches

1 either way depending on how they pulled, the width of
2 the handle bars. I tried to, you know, give a
3 variance and that gave me 17 inches to work with
4 there, so. That's why I did it that way.

5 MR. SOLYMOSI: That's all that I have.

6 EXAMINATION

7 BY MR. TAFT:

8 Q Mr. Guarino, you did not identify any of
9 these articles that you have some recollection of
10 reading in highway magazine in your expert report;
11 correct?

12 A No, but I have read numerous.

13 Q You have copies of any of those?

14 A I probably would have to go through and dig
15 them out, but yeah.

16 Q Did you rely upon those articles?

17 A Yeah, I was trying to get a general idea of
18 what I could do to design this and see how it would
19 come out.

20 Q Is there some reason if you relied upon
21 those articles that you didn't mention that in your
22 expert report?

23 A This is the first time I ever did this, and
24 I --

25 Q How many articles did you rely upon?

1 A I think there is one in particular that I
2 read.

3 Q Do you recall the name?

4 A No, I just --

5 Q Do you recall when it was published?

6 A No, I probably could go through and see if
7 I could find it.

8 Q Well, if you have that article, would you
9 please provide it?

10 A Yes.

11 Q Provide it to Mr. Solymosi?

12 A I will.

13 Q Because it was my understanding that you
14 had identified everything in your report on which you
15 relied?

16 A I told you this is the first time I done
17 this.

18 Q I know that, but that's why I asked you the
19 question earlier if there was something else.

20 A I was just basing it on, you know, the
21 knowledge I've had 28 years doing this stuff.

22 MR. TAFT: I have nothing further.

23 MR. SOLYMOSI: We would to read.

24 MR. TAFT: Exhibit 7 will not be attached.

25 It will be in the possession of Mr. Solymosi.

1 (THEREUPON, at 11:30 o'clock a.m., the
2 deposition was concluded.)
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SIGNATURE PAGE

JAMES A. GUARINO

Subscribed and sworn to before me this

_____ of _____, 2007.

Notary Public

- - -

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1 C-E-R-T-I-F-I-C-A-T-E

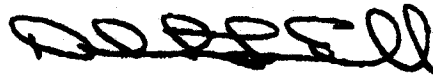
2 COMMONWEALTH OF PENNSYLVANIA,)
3) SS:
4 COUNTY OF ALLEGHENY:)

5 I, Deborah L. Endler, do hereby certify that
6 before me, a Notary Public in and for the Commonwealth
7 aforesaid, personally appeared JAMES A. GUARINO, who
8 then was by me first duly cautioned and sworn to
9 testify the truth, the whole truth, and nothing but
10 the truth in the taking of his oral deposition in the
11 cause aforesaid; that the testimony then given by him
12 as above set forth was by me reduced to stenotypy in
13 the presence of said witness, and afterwards
14 transcribed by means of computer-aided transcription.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified, and was completed without adjournment.

18 I do further certify that I am not a relative,
19 counsel or attorney of either party, or otherwise
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Pittsburgh,
23 Pennsylvania, on this 30th day of
24 May, 2007.

25 

Deborah L. Endler, Notary Public
In and for the Commonwealth of Pennsylvania
My commission expires November 2, 2008

- - -

EXHIBIT INDEX

GUARINO EXHIBITS

MARKED

1	1	Notice of Deposition	12
2	2	Resume	12
3	3	2/12/07 Guarino Expert Report	24
4	4	2/23/07 Guarino Expert Report	25
5	5	Diagram	33
6	6	Rumble strip diagram	53
7	7	Large photograph drawing (retained by Attorney Solymosi)	60

- - -


C-E-R-T-I-F-I-C-A-T-E

I, Deborah L. Endler, a notary public in and for the Commonwealth of Pennsylvania, do hereby certify that the parties did not waive the signing of the deposition of James Guarino, and that on May 30, 2007, I submitted the transcript to the witness for examination by him, by mailing the original signature page and a copy of the deposition to his attorney, Tibor Solymosi, Esquire, requesting the witness read his copy of the deposition and return the executed original signature page to me. A copy of the May 30, 2007 letter is attached to this certificate.

As of the date set forth below, the original signature page has not been signed and returned to me and the witness has not given me any reason for his refusal to sign the deposition.

Accordingly, pursuant to the Pennsylvania Rules of Civil Procedure, I have signed the within signature page in the original copy of the deposition in lieu of the witness doing so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of the office at Pittsburgh, Pennsylvania on this 1st day of August, 2007.


Deborah L. Endler, Notary Public
In and for the Commonwealth of Pennsylvania
My commission Expires November 2, 2008

Tab B
**Guarino Deposition Ex. 1 - Notice of
Deposition (J. Guarino)**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,
Plaintiff

v.

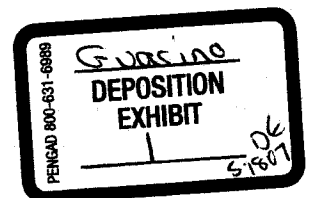
NORFOLK SOUTHERN CORPORATION
and NORFOLK SOUTHERN RAILWAY
COMPANY, INC.,
Defendants

CIVIL ACTION NO. 05-101 ERIE

NOTICE OF DEPOSITION (J. GUARINO)

TO: Tibor R. Solymosi, Esq.
Segel & Solymosi
818 State Street
Erie, PA 16501
Attorney for Plaintiff Robin Nixon

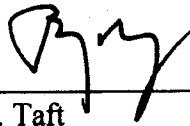
PLEASE TAKE NOTICE that the deposition upon oral examination of James A. Guarino, Guarino Enterprises, 10859 Hill Road, Wattsburg, Pennsylvania 16442, one of the expert witnesses disclosed by plaintiff Robin Nixon, will be taken by stenographic means, pursuant to Rule 30 of the Federal Rules of Civil Procedure, on Friday, May 18, 2007, commencing at 9:30 a.m., at the Offices of MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507, before Morse, Gantverg & Hodge, Inc., Court Reporters, or some other person duly authorized to administer the oath.



The deponent, James A. Guarino, is directed to bring the following documents and things to his deposition:

- (1) the most current Curriculum Vitae for James A. Guarino;
- (2) Mr. Guarino's complete expert witness file with respect to the April 27, 1997 accident including, but not limited to, Mr. Guarino's expert reports dated February 12, 2007 and February 23, 2007, and all drafts thereof, and any and all documents and things upon which Mr. Guarino relied in arriving at his opinions and/or in preparing his expert reports;
- (3) any and all documents and things upon which Mr. Guarino relied in arriving at his opinions and/or in preparing his expert reports, if not contained in his expert witness file; and
- (4) records of all billings and payments with respect to Mr. Guarino's expert witness services including all time records for such services.

Respectfully submitted,



Roger H. Taft
PA 19983/NY 2876456
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7603
(814) 454-4647 (facsimile)
rtaft@mijb.com

Attorneys for Defendants
Norfolk Southern Corporation and Norfolk
Southern Railway Company, Inc.

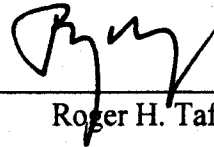
Dated: April 10, 2007

cc: Morse, Gantverg & Hodge, Inc., Court Reporters

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition (J. Guarino) was served upon the following attorney of record for plaintiff Robin Nixon, via First-Class United States Mail addressed as follows, this 10th day of April, 2007:

Tibor R. Solymosi, Esq.
Segel & Solymosi
818 State Street
Erie, PA 16501

A handwritten signature in black ink, appearing to read 'R. Taft', is written over a horizontal line.

Roger H. Taft, Esq.

Tab C
Guarino Deposition Ex. 2 - J. Guarino
Resume

RESUME

Education

Technical Memorial High School – graduate 1967
Gannon College – 1 year (1976-1977)

Specialized Training

~~28 years experience – asphalt repair, milling, sealcoating,~~
striping and power sweeping

Employment

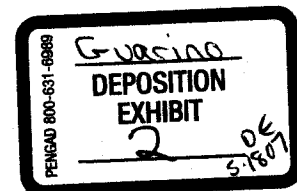
General Electric welder – 15 years (1971-1986)
Guarino Enterprises – 28 years (1979 to present)

Seminars

Numerous seminars through Sealmaster (asphalt sealing,
striping, crack filling and repair)

Guarino Enterprises

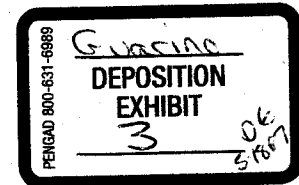
James A. Guarino
10859 Hill Road
Wattsburg, PA 16442
Phone (814) 825-3570
Fax (814) 825-9934



Tab D
Guarino Deposition Ex. 3 - J. Guarino
Expert Report (2/12/07)

**GUARINO
ENTERPRISES**

February 12, 2007

10350 Hill Road
Wattsburg, PA 16442
(814) 828-3670Tibor R. Solymosi, Esquire
Segel & Solymosi
818 State Street
Erie, Pennsylvania 16501RE: Nixon v. Norfolk Southern Corp., et al.
Estimate for Striping/Rumble Strips – West 19th Street

Dear Mr. Solymosi:

You have asked me to provide you with an estimate for the costs of installing striping, warning signs and rumble strips on West 19th Street in Erie, Pennsylvania. The work would cover approximately 1.2 miles on West 19th Street from Peach Street to Raspberry Street. The purpose would be to prevent and/or discourage children from riding along the trains and grabbing onto the train in order to be pulled along the roadway.

I have compiled an estimate for the following work which includes all labor, materials and equipment:

1. Install approximately 2.4 miles of rumble strips approximately 16" to 17" long X 7" wide on 1' centers approximately .5 inches deep, the same type that you would see along shoulders on interstate highways. This would include supplying water to the rumble strip mill machine and sweeping up the milled spoils off the pavement behind the rumble strip machine. The rumble strip would have been placed parallel to the railroad tracks and approximately 72 ½ inches from the center of the track to the center of the rumble strip. Based upon my measurements of a number of rail cars, an average width of rail car is approximately 128 ½ inches. A bicycle is approximately 30 inches in width and assuming that a child would be reaching out pretty much straight forward, the center line of the rumble strip should be approximately 72 ½ inches off the center line of the track.

Cost to Install Rumble Strips . . .

\$4,970.00

2. Install a 3 ½ inch wide yellow stripe just outside of the rumble strips, along with signs between the rails indicating DANGER – NO BIKES painted in 24 inch high letters, four signs per city block, with the signs alternating so that they are legible for children traveling in both directions.

Cost to Paint Stripes and Signs . . .

\$2,950.80

- Paving of Sweeping
- Pavement Marking
- Pavement Sealing
- Snow Blowing
- Salting
- Asphalt Patching and Repair

TOTAL COST FOR RUMBLE STRIPS, STRIPING AND SIGNS \$7,920.80

You have also asked me approximately how long the striping and rumble strips would last and provide an estimate as to how often this work would need to be done. Regarding the striping, I believe that would have to be performed on a yearly basis because of the plowing, salt wear and snow conditions.

Regarding the rumble strips, I know that the City has a constant paving renewal program going on yearly. How often blacktop paving surfaces need to be replaced is dependent on a number of factors such as the thickness of the pavement, the type of soil conditions under the pavement, drainage and traffic volume and the type of vehicles that travel on the roadway. Based upon my many years of experience in maintaining blacktop surfaces, I would estimate that the pavement on a City street could be expected to last approximately eight to ten years. I have examined the surface along West 19th Street and found it to be in excellent condition at the present time. Paved streets in the Erie area last conservatively eight to ten (8-10) years on average. Mayers Brothers Construction paved West 19th Street in 2002 after the tracks were removed. There is ample drainage and good crown to the road and good drainage and fall to the spills. The photographs you provided to me of West 19th Street when the tracks were still in place show that there was a good crown in the roadway providing good drainage away from the tracks. Based on these factors, I believe that on 19th Street in this area would last at least eight to ten years.

Taking the initial cost of milling and the yearly maintenance cost of striping, my opinion is that the present yearly cost to install the rumble strips and maintaining the striping over a nine year period would be approximately \$3,503.02 per year on average. Regarding what the costs would have been in the seventies, eighties and nineties, it is my opinion that the costs would have been less than current costs and consistent with cost of living at that time.

My opinion is based on my background, experience and training in the field of asphalt patching, preventive maintenance, repairs and safety/directional striping. It is also based upon my examination of the West 19th Street area between Raspberry Street and Peach Street. I have estimated and done this type of work for over 28 years and have based these prices upon what I charge, and what is normally charged for this type of work.


I have never authored or prepared any publications or articles within the preceding ten years nor have I ever testified as an expert at trial or by deposition within the preceding four years. You and I have agreed to an

hourly compensation for my services in this matter at the rate of \$25.00 per hour for preparation of this estimate and report. At this point in time, I have spent seven hours in order to prepare this report. I have attached to this report a drawing indicating what the rumble strips, striping and signage would look like as completed, and a copy of my estimate.

I hereby certify that the estimate and this report are in my opinion the fair market value for the work as stated.

With respect to my qualifications, please find attached hereto a Resume indicating my background, training and qualifications.

Sincerely,


James A. Guarino

RESUME

Education

Technical Memorial High School – graduate 1967
Gannon College – 1 year (1976-1977)

Specialized Training

28 years experience – asphalt repair, milling, sealcoating,
striping and power sweeping

Employment

General Electric welder – 15 years (1971-1986)
Guarino Enterprises – 28 years (1979 to present)

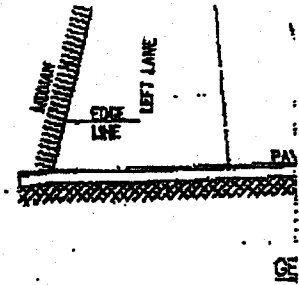
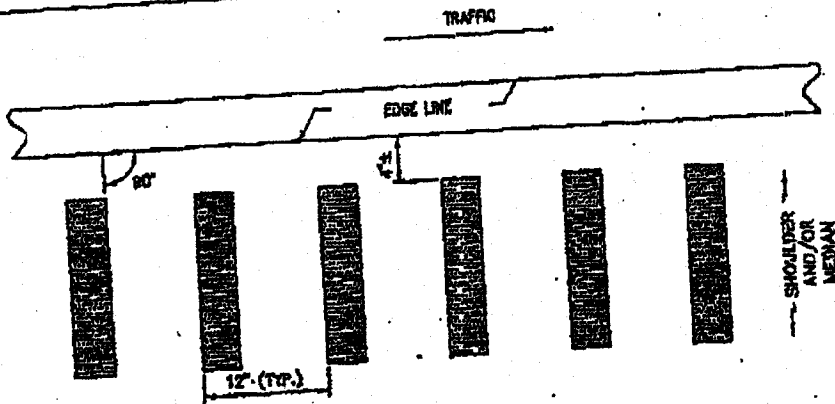
Seminars

Numerous seminars through Sealmaster (asphalt sealing,
striping, crack filling and repair)

Guarino Enterprises

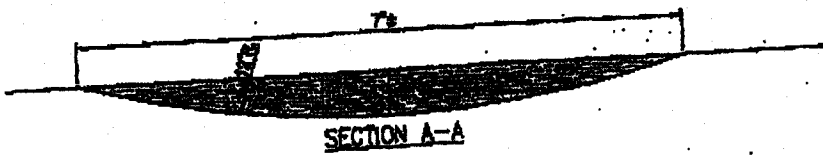
James A. Guarino
10859 Hill Road
Wattsburg, PA 16442
Phone (814) 825-3570
Fax (814) 825-9934

RUMBLE STRIP DIAGRAM



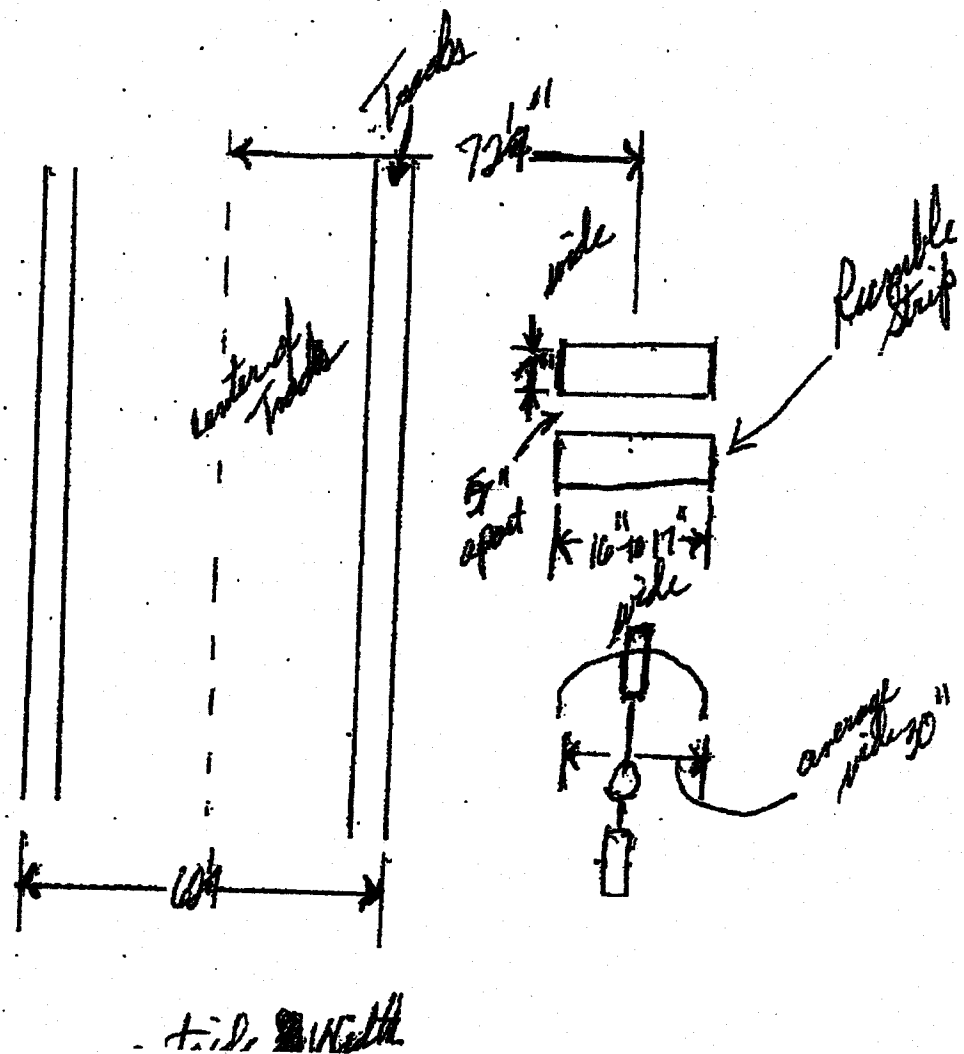
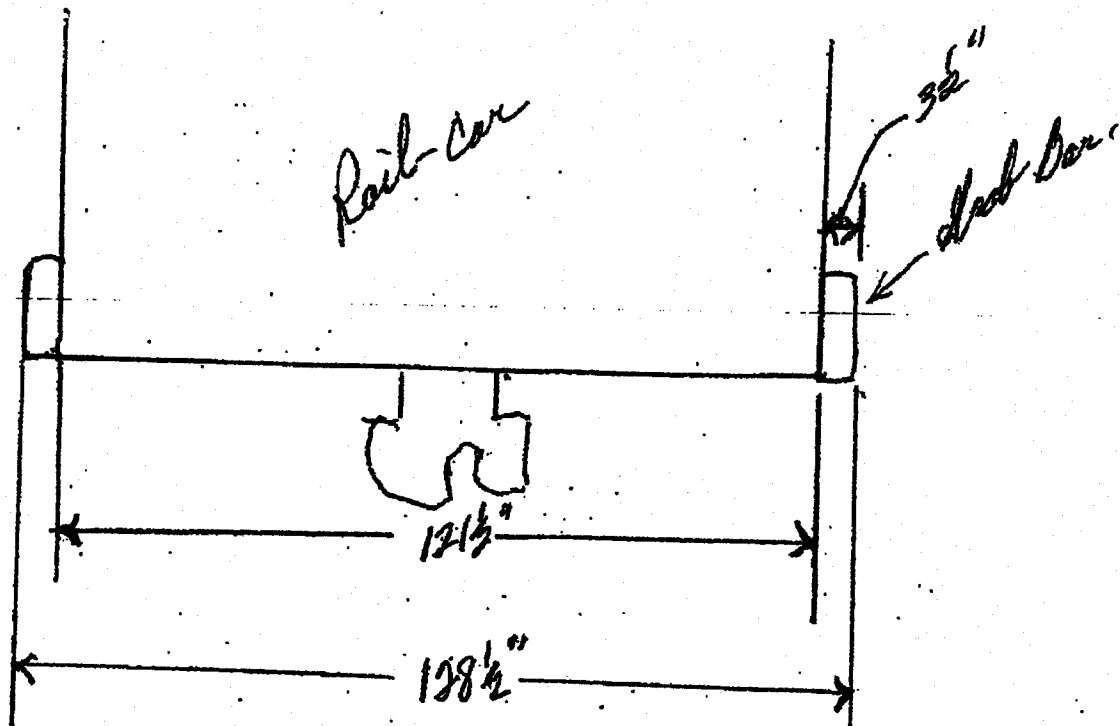
SONIC NA

LOCATION DETAIL OF SONIC NAP ALERT PATTERN
SEE NOTE 4



DETAILS OF SONIC NAP ALERT PATTERN

LEGEND
 (SRPM) SHOULDER
 SNAP (SONIC NAP)



- tide, with

**ESTIMATE FOR STRIPING AND
RUMBLE STRIPS FOR WEST 19TH STREET**

MILLING AND CLEANUP:

Milling 2.4 miles of milled rumble strips:	\$3,600.00
Water truck on site:	\$ 550.00
Two Tri-axle trucks - 2 hours	\$ 260.00
One Athey broom sweeper – 3 hours (cleanup & hauling)	\$ 260.00
Traffic Control- 4 flagmen to direct traffic-3 hours to end of job	<u>\$ 300.00</u>
TOTAL (LABOR, EQUIPMENT AND HAULING)	<u>\$4,970.00</u>

STRIPING:

Layout line at 3 ½" wide in solid line on both outer sides of Rumble strip. Sherwin Williams Highway Traffic yellow Paint (12,672 linear feet x .15 cents /foot)	\$1,900.80
Layout DANGER NO BIKES-24" letters between tracks at 4 per block spacing	
42 Stencils in Traffic Yellow paint	<u>\$1,050.00</u>
TOTAL STRIPING	<u>\$2,950.80</u>
 TOTAL COST	 <u>\$7,920.80</u>

AVERAGE COST OVER NINE YEARS

Year One – Milling and Striping	\$ 7,920.80
Years Two through Nine – Striping Only	
Eight Times \$2,950.80	<u>\$23,606.40</u>
TOTAL COST	<u>\$31,527.20</u>
 Divided by Nine years Equals a per year average of:	 \$ 3,503.02

● Sorry! When printing directly from the browser your map may be incorrectly cropped. To print the entire map, try clicking the "Printer-Friendly" link at the top of your results page.



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These directions are informational only. No representation is made or warranty given as to their content, road conditions or route usability or expeditiousness. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.



Sorry! When printing directly from the browser your map may be incorrectly cropped. To print the entire map, try clicking the "Printer-Friendly" link at the top of your results page.



START **W 19th St & Peach St**
Erie, PA 16502, US

END **W 19th St & Raspberry St**
Erie, PA 16502, US

Total Est. Time:
4 minutes

Total Est. Distance:
1.25 miles

Maneuvers

Distance

START

1: Start out going SOUTHWEST on W 19TH ST toward SASSAFRAS ST.

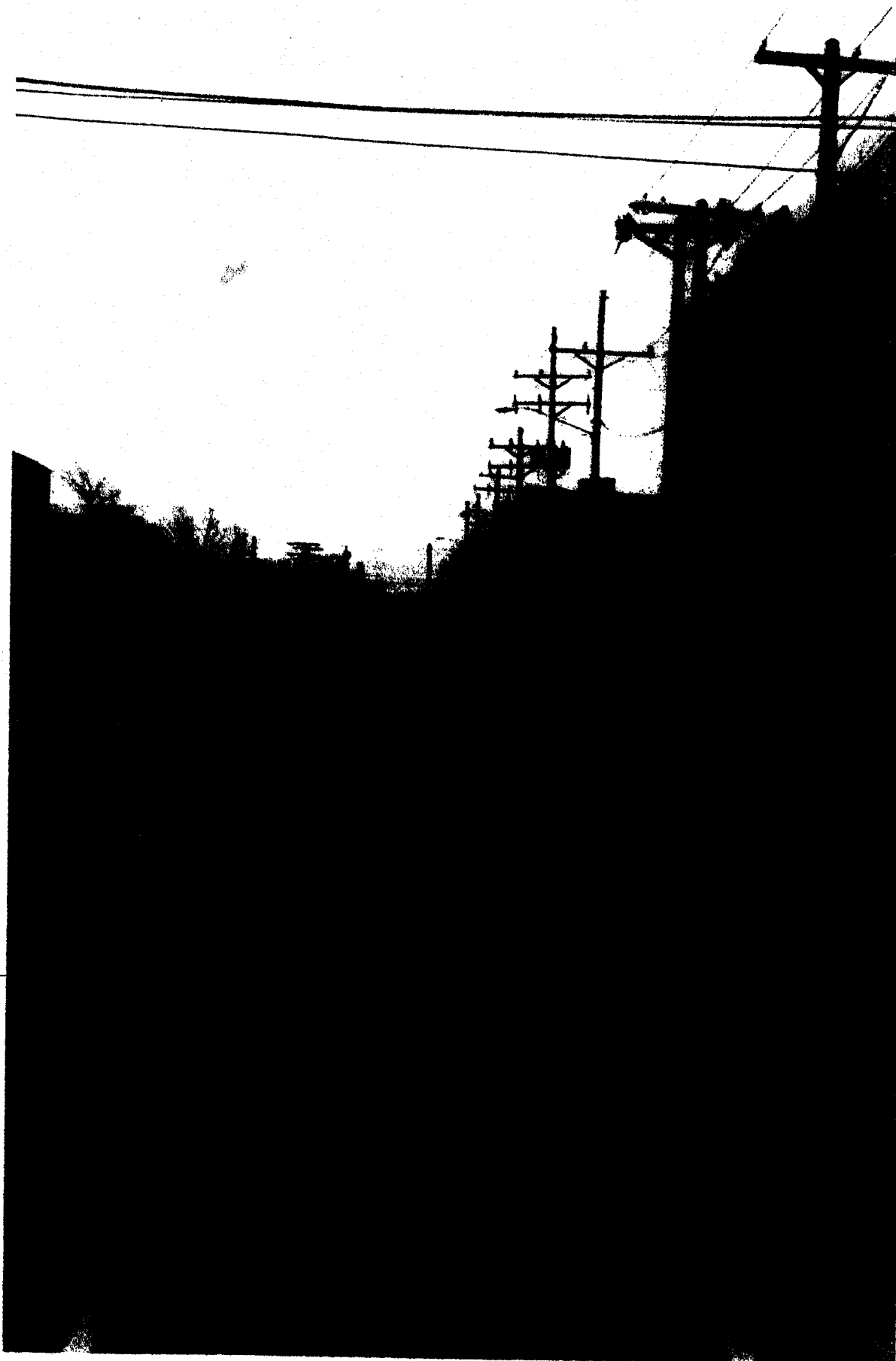
1.2 miles

END

2: End at W 19th St & Raspberry St
Erie, PA 16502, US

Total Est. Time: 4 minutes

Total Est. Distance: 1.25 miles



Tab E

**Guarino Deposition Ex. 4 - J. Guarino
Supplemental Expert Report (2/23/07)**

**GUARINO
ENTERPRISES**

10855 Hill Road
Wattsburg, PA 16442
(814) 825-3570

February 23, 2007

Tibor R. Solymosi, Esquire
Segel & Solymosi
818 State Street
Erie, Pennsylvania 16501

RE: Nixon v. Norfolk Southern Corp., et al.
Estimate for Striping/Rumble Strips – West 19th Street

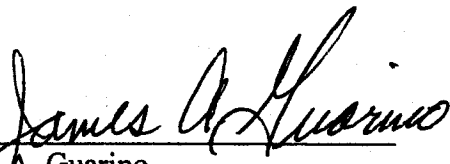
Dear Mr. Solymosi:

You have asked me to amend my report with regard to subcontractors quotes I relied on. I did obtain a quote from Donegal Construction that I used in my estimate. Their quote was \$3,600.00 for milling in the rumble strips. A copy of the quotation is included with this letter.

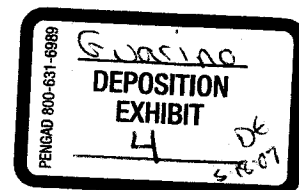
The only other subcontracting would be for the triaxle dump trucks, which I did not get specific quotes for. I simply used those figures based on my knowledge and experience in renting that type of equipment.

If you have any other questions, do not hesitate to call me.

Sincerely,


James A. Guarino

• Parking Lot Sweeping
• Pavement Marking
• Pavement Sealing
• Snow Blowing
• Salting
• Asphalt Patching and Repair



2 Donegal Construction Corporation
 1235 Marguerite Lake Road
 Greensburg, Pennsylvania 15601
 Pavement Profilers

(724) 423-7500 Telephone
 (724) 423-7501 Fax

- An Equal Opportunity Employer -

TO: Guarino Enterprises
 10859 Hill Road
 Erie, Pennsylvania 16442

Letting Date : February 12, 2007
 Project :
 Location : Erie Co. PA

Attention: Mr. Jim Guarino

WE APPRECIATE THE OPPORTUNITY TO PROVIDE YOU THE FOLLOWING QUOTATION:

<u>ITEM & DESCRIPTION</u>	<u>APPROXIMATE QUANTITY:</u>	<u>UNIT PRICE:</u>	<u>TOTAL:</u>
Milled Bituminous Rumble Strips	2.4 miles	1,500 / mile	\$3,600.00

SPECIAL CONDITIONS:

Rumble strips are approximately 16" - 17" wide on 1' centers approximately 0.5" deep as you would see along shoulders on interstate highways..

General contractor must supply water direct to the rumble strip mill.

General contractor responsible to sweep milled spoils off the pavement behind the rumble strip machine.

This Quotation must be accepted and returned within 45 days of letting date and is subject to the conditions above and on page 2. This Quotation shall be made an attachment to any ensuing Subcontract and it upersedes any conflicting provisions of the Subcontract.

PURCHASER

DONEGAL CONSTRUCTION CORPORATION

Accepted By: _____

By: _____

Company: _____

TITLE

Don Pfeifer - Vice President

Date: _____

Date: _____

General Conditions

1. This quotation is furnished for convenience only and shall not constitute a binding agreement unless signed by Purchaser and approved by Donegal Construction Corporation. It is subject to change only by Donegal Construction Corporation without notice and does not include any items not specifically set forth herein. No work shall begin without the receipt of acceptance of this quotation or a subcontract agreement with the quotation attached.

2. This quotation does not include a bond, special licenses, or special insurances (e.g. Railroad, OCP, Waiver of Subrogation, etc.) nor shall Donegal Construction Corporation accept any backcharges for bonds, insurances, association fees, etc.

3. Donegal Construction Corporation shall not be responsible for delays due to strikes, fires, accidents, labor or material shortage or other causes beyond its control and Donegal Construction Corporation is not responsible for back charges resulting from break downs beyond our control.

4. Donegal Construction Corporation can not guarantee the amount of pavement remaining over base, or prime or patching of base in the event base is exposed in milling operation.

5. Donegal Construction Corporation will not accept any other back charges against its account without prior authorization by an official of this company. All claims for damages shall be presented to Donegal Construction Corporation within forty-eight (48) hours of occurrence.

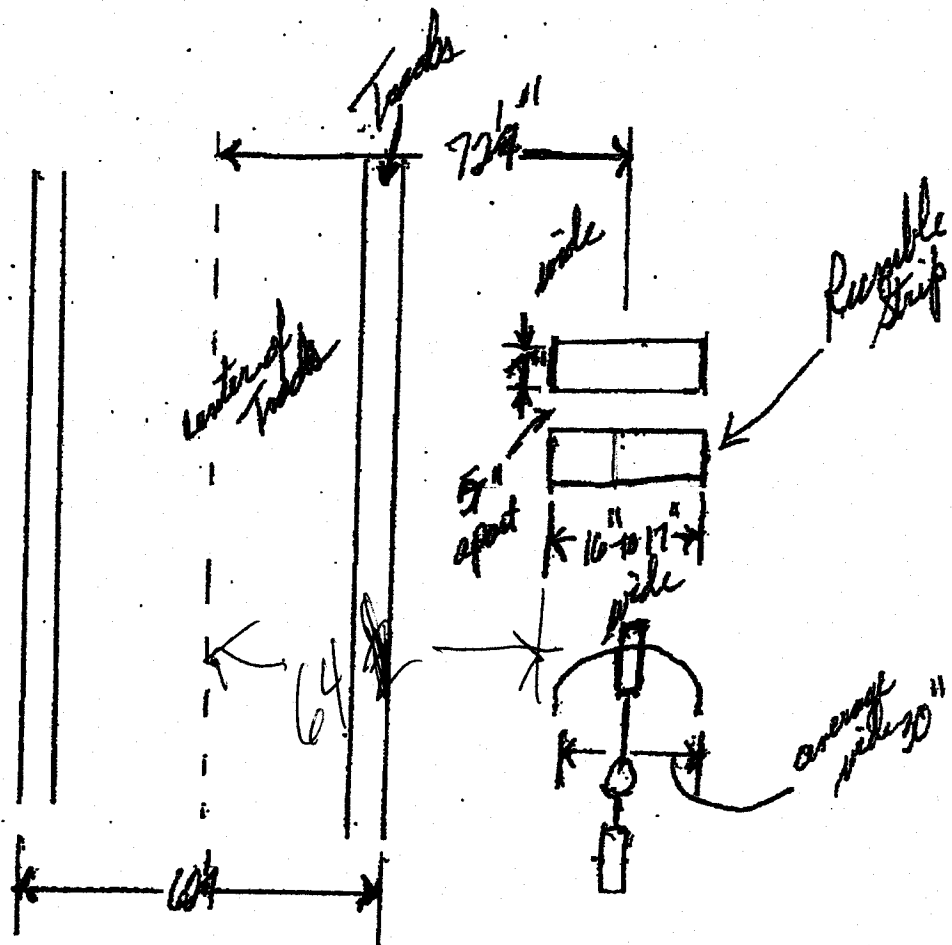
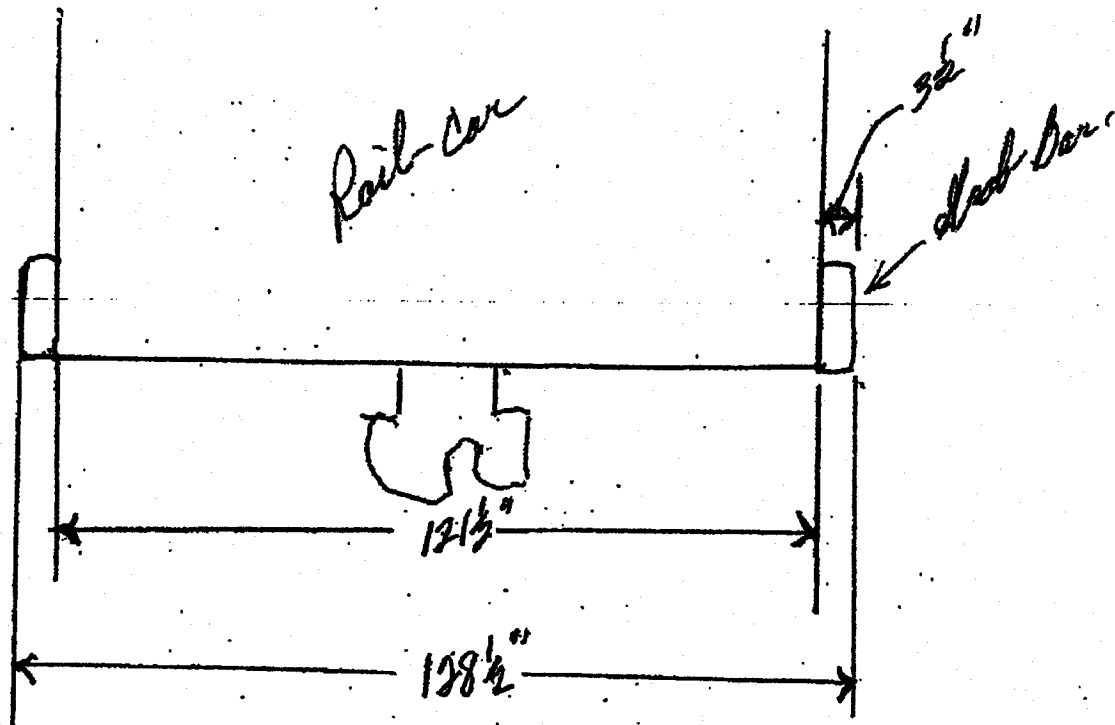
6. Purchaser agrees to pay Donegal Construction Corporation for the work contained in this quotation within seven (7) days of receipt from owner unless it is daily, hourly, or lump sum hourly quoted work which shall be paid in full within forty-five (45) days from work and is not contingent upon receipt of payment by owner to purchaser. Purchaser agrees that any work performed by Donegal Construction Corporation as part of any claim by Purchaser from owner shall be paid in full by Purchaser to Donegal Construction Corporation within forty-five (45) days of such work and is not contingent upon receipt of payment from owner to purchaser.

7. If an indemnification by Donegal Construction Corp is required, it shall be limited to the actions and / or omissions of Donegal Construction Corporation only and will not include the actions and / or omissions of others.

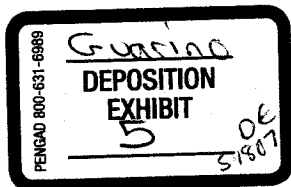
Responsibilities of Purchaser or Others:

- A.) All trucking and disposal of milled materials with enough trucks to keep milling machine working continuously
- B.) All clean-up, hand work or mini milling around inlets, curbs, manholes, other obstacles, and any temporary patching.
- C.) All traffic maintenance, signing, flag persons, etc.
- D.) Crushing or screening of milling material & permitting of stockpiles
- E.) Traffic maintenance to be set up expeditiously where traffic limitations restrict work hours
- F.) All engineering work - layout of LOW, grade, lines, transitions, set up of string-lines, etc.
- G.) Removal of traffic control devices and markers
- H.) Provide a minimum ten (10) days notice to proceed
- I.) Provide a water source located on project
- J.) Utility and/or Regulatory Agency Notifications prior to the work performed when necessary.

Tab F
Guarino Deposition Ex. 5 - J. Guarino
Handwritten Diagram (Measurements)

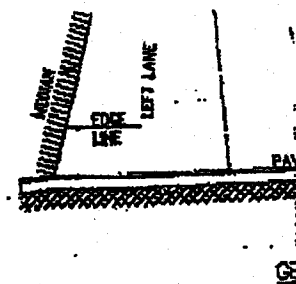
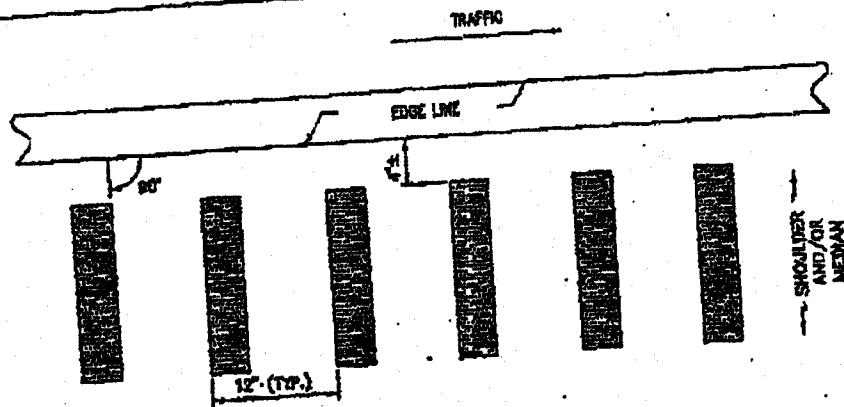


- tide with



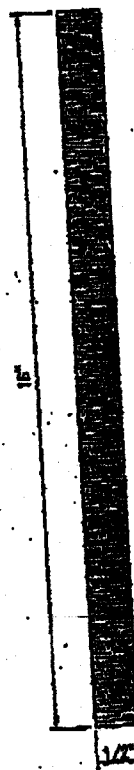
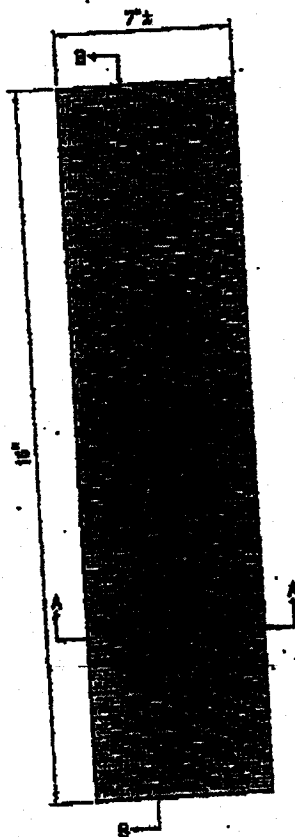
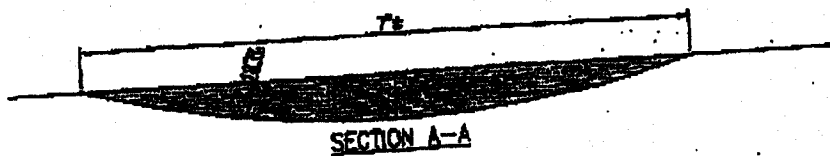
Tab G
Guarino Deposition Ex. 6 - Rumble
Strip Diagram

RUMBLE STRIP DIAGRAM



SONIC NAP

LOCATION DETAIL OF SONIC NAP ALERT PATTERN
SEE NOTE 4



DETAILS OF SONIC NAP ALERT PATTERN

LEGEND

(SRPM) SNOWPLOW

SNAP (SONIC NAP)

G. VASING
DEPOSITION
EXHIBIT
6 DE
5/15/07

Tab H
Guarino Deposition Ex. 7 - J. Guarino
Conceptual Photograph/Drawing
(oversized original in possession of
Tibor R. Solymosi, Esq., counsel for
plaintiff Robin Nixon)



CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2007, the foregoing Appendix to Defendants' Motion to Bar James R. Guarino as Expert Witness and to Exclude Guarino's Testimony and Other Evidence in Opposition to Defendants' Motion for Summary Judgment was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Roger H. Taft
Roger H. Taft, Esq.